

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL FOX,

Plaintiff,

vs.

PAULA PATSON, et al.,

Defendants.

CASE NO. 07cv2388 DMS (POR)

**ORDER GRANTING THE  
FEDERAL DEFENDANTS'  
MOTION TO DISMISS**

[Docket No. 21]

This case comes before the Court on a motion to dismiss filed by the Federal Defendants. Plaintiff has filed an opposition to the motion, and the Federal Defendants have filed a reply. For the reasons set out below, the Court grants the motion.

**I.**

**BACKGROUND**

Plaintiff Michael Fox is proceeding *pro se* in this case. On December 20, 2007, he filed a Complaint naming the Federal Bureau of Investigations, the United States Attorneys Office and the United States Department of Justice as defendants. In that Complaint, Plaintiff sought an order from this Court directing those entities to investigate the alleged violations of Plaintiff's civil rights.

On January 30, 2008, Plaintiff filed a First Amended Complaint. That Complaint names a number of additional individuals and entities as defendants, and includes a long narrative of recent events in Plaintiff's life. One of these events was a car accident that occurred in Galveston, Texas. Plaintiff was sleeping in his minivan, which was parked on the side of a road, when his vehicle was

1 hit from behind by another vehicle. Certain individuals involved in that accident are named as  
 2 defendants in the First Amended Complaint.

3 In general, the First Amended Complaint includes allegations of a vast government conspiracy  
 4 to violate Plaintiff's constitutional rights, including bodily attacks on Plaintiff by government officials,  
 5 constant government surveillance of Plaintiff, government interference with Plaintiff's vehicle,  
 6 government interference with Plaintiff's postal and electronic mail delivery, and the subject car  
 7 accident, which Plaintiff alleges was staged by the government.

8 **II.**

9 **DISCUSSION**

10 The Federal Defendants move to dismiss the First Amended Complaint on three grounds.  
 11 First, they argue Plaintiff has failed to satisfy the pleading requirements of Federal Rule of Civil  
 12 Procedure 8(a). Second, the Federal Defendants assert the Court lacks subject matter jurisdiction over  
 13 Plaintiff's claims. Finally, the Federal Defendants contend Plaintiff's claims against them are  
 14 unexhausted. Because the jurisdictional argument is dispositive, the Court begins and ends its analysis  
 15 with that issue.

16 Based on this Court's review of the First Amended Complaint, it appears Plaintiff is attempting  
 17 to allege a violation of his federal constitutional rights, over which this Court would have subject  
 18 matter jurisdiction pursuant to 28 U.S.C. § 1331. However, a district court lacks subject matter  
 19 jurisdiction where the claim before it is "wholly insubstantial and frivolous." *Bell v. Hood*, 327 U.S.  
 20 678, 682-83 (1946). A claim is frivolous "where it lacks an arguable basis either in law or in fact."  
 21 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). If a claim is classified as frivolous, "there is, by  
 22 definition, no merit to the underlying action and so no reason to grant leave to amend." *Lopez v.  
 23 Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (*en banc*).

24 Here, the Federal Defendants argue Plaintiff's case meets this standard, and given the  
 25 allegations set out above, the Court agrees. Plaintiff's allegations about a vast government conspiracy  
 26 are "totally divorced from the real world, or in the language of the Supreme Court, 'so attenuated and  
 27 unsubstantial as to be absolutely devoid of merit.'" *O'Connor v. United States*, 159 F.R.D. 22, 26 (D.  
 28 Md. 1994) (quoting *Neitzke*, 490 U.S. at 327 n.6). Because Plaintiff cannot possibly amend his

1 complaint to correct these deficiencies, the motion to dismiss is granted without leave to amend.

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**III.**

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**CONCLUSION AND ORDER**

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In light of the above, the Court grants the Federal Defendants' motion to dismiss. All other pending motions are hereby denied as moot. The Clerk of Court shall close this case.

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**IT IS SO ORDERED.**

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DATED: June 24, 2008

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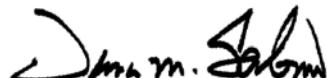
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HON. DANA M. SABRAW  
United States District Judge